

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs December 20, 2006

**THOMAS E. BARGER v. HOWARD CARLTON, Warden and  
STATE OF TENNESSEE**

**Appeal from the Criminal Court for Johnson County  
No. 4839 Robert E. Cupp, Judge**

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**No. E2006-01102-CCA-R3-HC - Filed April 17, 2007**

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The petitioner, Thomas E. Barger, filed a 2006 Johnson County Criminal Court petition for habeas corpus relief from his 2005 guilty-pleaded, Knox County convictions of two counts of Class C robbery. The 2005 Knox County judgments appended to the petition showed that the petitioner, a Range I standard offender, was sentenced on each conviction to a term of five years to be served on probation. The judgments recite that the probationary sentences were to be served consecutively to each other. In the petition for habeas corpus, the petitioner claimed that his sentences were void because the judgment forms failed to include information relative to pretrial jail credits and failed to specify that the sentences were to be served consecutively to prior felony convictions. The habeas corpus court entered an order summarily dismissing the petition. We hold, as a matter of law, that pretrial jail credits do not accelerate the expiration date of a defendant's probationary sentence; therefore, the judgments of conviction are not void. We also conclude that pursuant to *Charles G. Summers v. State*, \_\_\_ S.W.3d \_\_\_, No. M2004-02806-SC-R11-HC (Tenn., Nashville, Jan. 23, 2007), the habeas corpus court did not err in dismissing the petition without the appointment of counsel and without a hearing. We affirm the order dismissing the petition.

**Tenn. R. App. P. 3; Judgment of the Criminal Court is Affirmed.**

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P.J., and DAVID H. WELLES, J., joined.

Thomas E. Barger, Pro Se, Appellant.

Robert E. Cooper, Jr., Attorney General & Reporter; and Blind Akrawi, Assistant Attorney General, for the Appellee, State of Tennessee.

## OPINION

The legal issues raised in a habeas corpus proceeding are questions of law, and our review of questions of law is de novo. *Hart v. State*, 21 S.W.3d 901, 903 (Tenn. 2000).

“[T]he writ of habeas corpus will issue in Tennessee ‘only when “it appears upon the face of the judgment or the record of the proceedings upon which the judgment is rendered” that a convicting court was without jurisdiction or authority to sentence a defendant, or that a defendant’s sentence of imprisonment or other restraint has expired.’” *State v. Ritchie*, 20 S.W.3d 624, 630 (Tenn. 2000) (quoting *Archer v. State*, 851 S.W.2d 157, 164 (Tenn. 1993)). “A void judgment is one in which the judgment is facially invalid because the court lacked jurisdiction or authority to render the judgment or because the defendant’s sentence has expired.” *Taylor v. State*, 995 S.W.2d 78, 83 (Tenn. 1999).

A void conviction is one which strikes at the jurisdictional integrity of the trial court. *Id.*; see *State ex rel. Anglin v. Mitchell*, 575 S.W.2d 284, 287 (Tenn. 1979); *Passarella v. State*, 891 S.W.2d 619, 627 (Tenn. Crim. App. 1994). Because in this case the trial court apparently had jurisdiction over the actus reus, the subject matter, and the person of the petitioner, the petitioner’s jurisdictional issue is limited to the claim that the court was without authority to enter the judgment. See *Anglin*, 575 S.W.2d at 287 (“‘Jurisdiction’ in the sense here used, is not limited to jurisdiction of the person or of the subject matter but also includes lawful authority of the court to render the particular order or judgment whereby the petitioner has been imprisoned.”); see *Archer*, 851 S.W.2d at 164; *Passarella*, 891 S.W.2d at 627. The invalidity of the sentence itself, as well as the broader invalidity of the conviction, results in a void judgment and is a sufficient basis for habeas corpus relief. See *Stephenson v. Carlton*, 28 S.W.3d 910, 911 (Tenn. 2000) (stating that a void sentence, as well as a void conviction, may result in a void judgment and be the subject of a habeas corpus proceeding).

The procedures authorizing the use of the writ of habeas corpus are codified in Tennessee Code Annotated sections 29-21-101 through 29-21-130. The statutory procedures for seeking habeas corpus relief are mandatory and must be followed scrupulously. *Hickman v. State*, 153 S.W.3d 16, 19 (Tenn. 2004). Most recently, in *Charles G. Summers v. State*, \_\_\_ S.W.3d \_\_\_, No. M2004-02806-SC-R11-HC (Tenn., Nashville, Jan. 23, 2007), the supreme court held,

In the case of an illegal sentence claim based on facts not apparent from the face of the judgment, an adequate record for summary review must include pertinent documents to support those factual assertions. When such documents from the record of the underlying proceedings are not attached to the habeas corpus petition, a trial court may properly choose to dismiss the petition without the appointment of counsel and without a hearing. Any broader interpretation of when the appointment of counsel is necessary would

be inconsistent with the narrow scope of habeas corpus relief and the strict technical requirements for seeking such relief.

\_\_\_ S.W.3d at \_\_\_, slip op. at 9.

#### **A. Pretrial Jail Credits**

We discern from the petitioner's pro se appellate brief that he has two complaints related to pretrial jail credits. First, he complains that his judgments are facially invalid and void because they contain no notation or reference to pretrial jail credits. Second, he complains that he was entitled to pretrial jail credits, but the convicting court in sentencing him and entering judgments of conviction failed to award the credits.

The petitioner's complaints do not entitle him to habeas corpus relief. First, the record is devoid of any documentation of when, or if, the petitioner served any time pretrial. Likewise, the record is devoid of any transcripts of the petitioner's plea submission or sentencing hearing. This defeats his claim, in the first instance, pursuant to *Charles G. Summers*.

Second, as a matter of law, pretrial jail credits do not affect or accelerate the expiration date of a defendant's probationary sentence. See *State v. Kendrick Lamont Brooks*, No. W2004-00475-CCA-R3-CD, slip op at 3 (Tenn. Crim. App., Jackson, Apr. 28, 2005); *State v. William A. Marshall*, No. M2001-02954-CCA-R3-CD, slip op. at 6 (Tenn. Crim. App., Nashville, Oct. 14, 2002); *State v. Dennis R. Jacks*, No. E2000-00643-CCA-R3-CD, slip op. at 2 (Tenn. Crim. App., Knoxville, May 7, 2001). The underlying judgments of conviction in the record before us show that the petitioner was ordered to serve an effective 10-year probationary sentence. Accordingly, his conviction judgments are not facially void because they omit reference to something inapplicable to the petitioner's sentences.

Third, the petitioner's reliance on Code section 40-23-101(c) is misplaced. That section provides,

The trial court shall, at the time the sentence is imposed and the defendant is committed to jail, the workhouse or the state penitentiary for imprisonment, render the judgment of the court so as to allow the defendant credit on the sentence for any period of time for which the defendant was committed and held in the city jail or juvenile court detention prior to waiver of juvenile court jurisdiction, or county jail or workhouse, pending arraignment and trial. The defendant shall also receive credit on the sentence for the time served in the jail, workhouse or penitentiary subsequent to any conviction arising out of the original offense for which the defendant was tried.

T.C.A. § 40-23-101(c) (2006). This statute speaks in terms of an incarcerative sentence – committed “to jail, the workhouse or the state penitentiary *for imprisonment*”; the petitioner was sentenced to probation, a sentence for which pretrial jail credits are not available. (Emphasis added.)

Fourth, the petitioner’s reliance on *State v. Richard Daniel Filauero*, No. M2002-02186-CCA-R3-CD (Tenn. Crim. App., Nashville, Apr. 16, 2004), is also misplaced. In that case, the defendant sought to withdraw his negotiated guilty plea to two counts of child rape. The agreement with the state provided for two concurrent 25-year sentences, and the agreement stipulated that the defendant would not receive pretrial jail credit for the 18 months spent in jail. On appeal, this court ruled that the defendant’s sentence, incorporating his waiver of mandatory pretrial jail credits, was illegal.

The record in this case is devoid of any documentation showing that the petitioner’s guilty pleas included a waiver of pretrial jail credits. In addition, the defendant in *Richard Daniel Filauero* was going to receive an incarcerative 25-year sentence, thereby triggering the statutory provision, section 40-23-101(c), requiring an award of pretrial jail credits. *See* slip op. at 5-6 (relying on mandatory terms of section 40-23-101(c)).<sup>1</sup>

## **B. Concurrent/Consecutive Sentencing**

The petitioner also complains that his sentences are illegal because he was on parole status when he committed the offenses that are the subject of his petition before us. There are no documents attached to the petitioner’s application for habeas corpus relief that contain any information about his parole status. The judgments in the record are facially valid; no sentencing illegality is evident on the face of the judgments. The petitioner’s failure to support his factual assertions with pertinent documents from the record of the underlying proceedings warranted the habeas corpus court’s summary dismissal of his petition without the appointment of counsel and without a hearing. *See Charles G. Summers*.

Based upon the foregoing, the habeas corpus court was within its authority to dismiss the petition. The judgment is affirmed.

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JAMES CURWOOD WITT, JR., JUDGE

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<sup>1</sup> In his brief, the petitioner also complains that the lower court improperly consulted and relied upon his “TOMIS” sentencing printout sheet maintained with the Tennessee Department of Correction. The petitioner misreads the court’s order. In the order, the court observed that “read[ing] between the lines,” it could be assumed that the petitioner has a copy of his “TOMIS,” which would show any pretrial jail credits. Nowhere in the order does the lower court indicate that it actually reviewed any “TOMIS” report.

